

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BETTY ANNE WATERS, as
Administratrix of the Estate of
KENNETH WATERS,

Plaintiff,

v.

TOWN OF AYER, et al.,

Defendants.

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) Case No. 04 Civ. 10521 (GAO) (JGD)
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STIPULATION

Plaintiff Betty Anne Waters, as administratrix of the Estate of Kenneth Waters, and defendants Town of Ayer, Nancy Taylor-Harris, Arthur Boisseau, the estate of Buddy Decot, William Adamson, Sr. and Philip L. Connors (collectively, “the parties”), hereby stipulate and agree as follows:

1. On May 21, 1980, Katharina Brow was stabbed to death in her Ayer, Massachusetts home.¹
2. On June 2, 1980, APD Chief William Adamson reported that “From evidence gathered at the scene investigators defin[i]tely feel as though assailant (s) sustained some injuries as result of resistance [sic] from the victim to the extent that assailant (s) may have sought

¹ See Autopsy Report at AG000156–63 (attached as Ex. A, Autopsy Report).

medical treatment.”²

3. Detective Lieutenant Dwyer and APD Chief Adamson checked the surrounding hospitals for patients with injuries sustained with a knife or other objects.³
4. Using pre-DNA technology, investigators identified two types of blood at the scene before trial: type B-positive, consistent with the victim, and type O, believed to have been left by the perpetrator.⁴
5. Type O blood was identified on the floor of the entrance to the back left bedroom (Item #2); the fibers of the bathroom rug (Item #3); the front of the left closet in the middle bedroom (Item #4); linens recovered from the hallway floor (Items #10A, B, D, E & F); carpeting in the living room (Item #21); the curtain from the front door window (Item #22); and the inside of the front door (Item # 23).⁵
6. The remaining bloodstains⁶ were identified as Type B, consistent with the victim’s blood type.⁷
7. Both the victim’s husband and Kenneth Waters, along with almost half of the male

² Ayer Police Department Report dated June 2, 1980, at B000011 (attached as Ex. B, APD Report 6/2/80).

³ Correspondence from Dwyer to O’Donovan dated May 21, 1980 at AG000151 (attached as Exhibit C, Dwyer Report 5/21/80).

⁴ See Ex. B, APD Report 6/2/80 at B000011; Ex. C, Dwyer Report 5/21/80 at AG000151; Commonwealth of Massachusetts, Department of Public Safety, Laboratory Report dated Apr. 11, 1981 at IP00022 (attached as Ex. D, State Lab Serology Report).

⁵ Ex. D, State Lab Serology Report at IP00022.

⁶ The remaining blood stains were on Items #1, 4A, 5–9, 10C, 11, 13, 14A, 14B, 15–20, 24. (See Ex. D, State Lab Serology Report at IP00022.)

⁷ See *id.*

population, had type O blood.⁸

8. On May 11, 1983, Kenneth Waters was convicted of first-degree murder and armed robbery and was subsequently sentenced to life in prison.
9. In 2001, with the consent of the Middlesex County District Attorney's Office, Dr. Edward Blake of Forensic Science Associates ("FSA") conducted DNA testing on the following type-O bloodstains found at the Brow homicide scene: bathroom rug (Item #3), linens recovered from the hallway floor (Items #10A, B, D, E & F), and carpeting in the living room (Item #21). Dr. Blake's DNA tests showed that this type-O blood was left by a single male source.⁹ According to Dr. Blake, "it is unlikely that more than one human being out of several hundred million possess" the DNA profile of this single male source.¹⁰ Based on the DNA test results, Kenneth Waters was conclusively excluded as the source of that blood.¹¹
10. On March 13, 2001, the Middlesex County District Attorney's Office issued a press release stating that "the DNA of blood collected at the [Brow] crime scene does not match the DNA of the defendant, Kenneth Waters."¹²

⁸ Commonwealth of Massachusetts, Department of Public Safety, Laboratory Report dated Dec. 21, 1982 at AG001411 (attached as Ex. E, State Lab Report to FBI). *Commonwealth v. Waters*, Testimony of John Abbot, Trial Tr. at 3-293 (attached as Ex. F, Abbot Testimony).

⁹ Forensic Science Associates Report #1 dated Jan. 29, 2001 at IP00106-07 (attached as Ex. G, FSA Report #1).

¹⁰ Forensic Science Associates Report #2 dated Feb. 27, 2001 at IP00191 (attached as Ex. H, FSA Report #2).

¹¹ *Id.* at IP00192.

¹² Middlesex County District Attorney's Office Press Release dated Mar. 13, 2001 at IP00797 (attached as Ex. I, DA Press Release).

11. In the same press release, the District Attorney's Office further stated that "the State Crime Police Lab notified the District Attorney's Office that it concurred with FSA's results."¹³
12. In light of the undisputed DNA exclusion, with the consent of the Middlesex County District Attorney's Office, Kenneth Waters was released from prison on March 15, 2001.¹⁴
13. The District Attorney's Office subsequently retained Bode Technology Group to conduct additional DNA testing of the Brow crime scene evidence.¹⁵ As reflected in their report dated June 8, 2001, the Bode scientists also found that neither the victim nor Kenneth Waters was the source of the DNA profile obtained from the blood stain on the bathroom rug (Item #3).¹⁶
14. On June 28, 2001, due to the undisputed DNA evidence, the District Attorney's Office withdrew the charges against Kenneth Waters by filing a *nolle prosequi*.¹⁷
15. Elizabeth O'Connor has sworn she is the biological mother of Kenneth Waters and Leroy

¹³ *Id.* at IP00798.

¹⁴ *Commonwealth v. Waters*, Order Granting Unopposed Motion for a New Trial dated March 15, 2001 (attached as Ex. J, Order Granting New Trial).

¹⁵ Correspondence from Calkins to Love dated May 23, 2001 at SP000034 (attached as Ex. K, Calkins Correspondence).

¹⁶ Bode Forensic DNA Case Report dated June 8, 2001 at SP000029 (attached as Ex. L, Bode Report).

¹⁷ *Commonwealth v. Waters, Nolle Prosequi* dated June 28, 2001 (attached as Ex. M, *Nolle Prosequi*).

Waters.¹⁸ An oral swab was taken from Ms. O'Connor and sent by UPS to Reliagene Technologies laboratory in New Orleans, Louisiana where it was received on April 13, 2007.¹⁹

16. As reflected in their report of May 10, 2007, Reliagene scientists conducted DNA testing of Ms. O'Connor's oral swab, and the DNA results establish to a scientific certainty that all of her biological offspring, including Kenneth Waters and his brother Leroy Waters, are excluded as the source of the type-O blood found at the Brow homicide scene.²⁰

Dated: November 6, 2007

DEFENDANTS TOWN OF AYER,
NANCY TAYLOR-HARRIS, ARTHUR
BOISSEAU, ESTATE OF BUDDY DECOT,
WILLIAM ADAMSON, AND PHILIP L.
CONNORS

PLAINTIFF BETTY ANNE
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¹⁸ Affidavit of Elizabeth O'Connor at ¶¶ 3, 5 (attached as Ex. N, O'Connor Affidavit).

¹⁹ Reliagene Report dated May 10, 2007 (attached as Ex. O, Reliagene Report).

²⁰ *Id.*